REMARKS/ARGUMENTS

In response to the Final Office Action mailed April 15, 2008, Applicants propose to amend their application and request reconsideration in view of the proposed amendments and the following remarks. In this amendment, Claims 1, 12, 21 and 31 are proposed to be amended, no new claims have been added and no claims have been cancelled without prejudice so that Claims 1-23 and 25-54 remain pending. No new matter has been introduced.

Claims 1-7, 9-15 17-21 and 28-29 were rejected as being anticipated by U.S. Patent Application No. 2003/0009132 to Schwartz et al. (Schwartz). This rejection is respectfully traversed.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

Schwartz discloses a needle and/or a catheter having a plurality of holes formed therethough for micro or diffused injection of injectates into a body surface. The holes may be formed in the needle using a cutting laser and other techniques known in the art. The needle or catheter would similarly be advantageously used for aspiration as the presence of a plurality of holes provides a low resistance fluid flow.

Schwartz fails to disclose or even remotely suggest devices comprising porous elements being formed from a compliant material and configurable into different shapes. In addition, in Schwartz, there is a

single lumen that can be for fluid delivery OR for fluid aspiration. See the last sentence of paragraph [0068].

> "The needle or catheter could similarly be advantageously used for aspiration as the presence of a plurality of holes provides a low resistance fluid flow."

Since Schwartz fails to disclose either of these features, there can be no anticipation. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 8, 16 and 30 were rejected as being unpatentable over Schwartz. Claim 22 was rejected as being unpatentable over Schwartz in view of U.S. Patent No. 6,979,293 to Hansmann et al. (Hansmann). Claims 23 and 35-27 were rejected as being unpatentable over Schwartz in view of U.S. Patent no. 5,916,193 to Stevens et al. (Stevens). Claims 31-34 were rejected as being unpatentable over Schwartz in view of Hansmann and Stevens. These rejections are respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness:

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the

> claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. In *re Vaeck*, 947 F.2d,488,20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

> "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re Royka*, 490F.2d 981, 180 USPQ 580 (CCPA 1074). "All words in a claim must be considered in judging the patentability of that claim against the prior art." In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. In *re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988)."

Hansmann discloses an ultrasonic catheter configured to delivery ultrasonic energy and a therapeutic compound to a treatment site.

Stevens discloses a venting catheter, system and method that are provided for withdrawing blood and other fluids from a patient's heart to facilitate decompressing the heart during cardioplegic arrest and cardiopulmonary bypass, without the need for a thoracotomy and without puncturing the aorta, pulmonary artery, or heart itself. The venting catheter is configured to be introduced into a peripheral vein and intralumninally advanced through the right side of the heart and into the pulmonary artery. The venting catheter includes a lumen configured to withdraw blood at a rate of at least about 50 ml/min at a pressure of no less than about -350 mmHg. A flow-directing means is provided to

facilitate guiding the catheter into the pulmonary artery by being carried by blood flow through the heart.

None of the references, whether taken alone or in combination disclose the subject matter of amended claims 1, 12, 21 and 31. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 1-23 and 25-34 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claim 1-34 of U.S. Application No. 11/318,049. Applicants hereby submit a Terminal Disclaimer.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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